

**Washington County Land Use Authority Meeting**  
**August 10, 2010**  
**(Recording available)**

The Washington County Land Use Authority Meeting was held on Tuesday, August 10, 2010, at the Washington County Administration Building, 197 E. Tabernacle, St. George, Utah. The meeting was convened at 1:30 p.m. by Pro tem Chair Doug Wilson. Commissioners present: Joann Balen, Debora Christopher, Rick Jones, and Dave Everett. Also present: Deon Goheen, Planning & Zoning Administrator; Rachelle Ehlert, Deputy Attorney; Todd Edwards, Public Works Engineer; John Willie, Senior Planner; and Darby Klungervik, Planning Secretary.

Excused: Kim Ford, Julie Cropper, Mike Stucki, Kurt Gardner

Audience attendance: Bruce Bissell, David W. Jensen and Patti Wynn

Pro tem Chair Wilson led the audience in the Pledge of Allegiance and explained meeting protocol.

**Item #1. STAFF COMMENTS:** Review staff comments for each item listed below. Staff initiated.

**Item #2. CHAIR NOMINATIONS** Annual election for a Chairman and Vice-Chairman to be elected from the appointed members of the Commission by a majority of the total membership. County initiated.

The Planner explained as per the Planning Commission Procedures, the Planning Commission should elect a Chairman and Vice-Chairman, during the first regularly scheduled meeting in August. The Chairman will be elected from the duly appointed members of the Commission by a majority of the total membership. Both Chairman and Vice-Chairman may be elected to subsequent terms. The Planner suggested tabling this item until all the members were present.

The Commission decided to move forward with this item.

**Commissioner Everett made a motion to re-elect Mike Stucki as Chairman and Kim Ford as Vice Chairman. Commissioner Christopher seconded the motion, with all four (4) commissioners voting aye.**

**Item #3. DISCUSSION ITEM/GENERAL PLAN AMENDMENT** Review Appendix I. General Analysis of Each Wilderness Area, Community Maps and General Plan Map, portions of the Washington County General Plan of 2010. County initiated.

The Planner said John Willie has been working on the General Plan for the past year, reviewing the last 2 sections at the previous meeting. He is ready to review the 1<sup>st</sup> Appendix, General Analysis of Each Wilderness Area, individual Community Maps and The General Plan Map, all of which are portions of the Washington County General Plan of 2010. The commission should be ready to make comments on outline submitted to you at the previous meeting and again as an e-mail. It is about ready to go out for advertising for adoption.

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John Willie, Senior Planner, said he is still willing to take questions and comments, but at this point they will not be making too many changes. He included the county ended up with sixteen (16) wilderness areas, which is three (3) more than the county started out with when the land bill went to Washington. The review on those three is a little thin because they were never reviewed by the BLM. The information on the rest of the wilderness areas is basically a summary of the review the BLM did in the 1980's. The final survey on various areas has not been completed, but a more detailed map will be provided when it is.

The Commission discussed access to wilderness areas. Mr. Willie explained motorized vehicles are not permitted but horses are. The Commission suggested a list be compiled of what is allowed and prohibited in wilderness areas. Mining rights were briefly discussed. Mr. Willie distributed copies of the maps to the commission and said the utility map showing proposed new lines may not be completed at this time. Pro tem Chair Wilson pointed out that several mountain bike trails were missing from the map and Mr. Willie said he will add them as he becomes aware of them. Pro tem Chair Wilson suggested obtaining the data on trails from the BLM.

This item will move forward to a Public Hearing in a couple of weeks.

**Item #4. CONDITIONAL USE PERMIT** Request permission for an exception to the height requirement on two (2) poles for amateur radio facilities and one (1) 45' free standing crank up tower in Dixie Deer Estates on Rex Layne Dr in Central. Bruce Bissell and David Jensen, applicants.

The Planner reminded the commission that this item was reviewed at length previously as a discussion item. The commission has received letters from property owners and further information from Mr. Poppitt regarding the poles installed. As previously reported, both applicants are amateur HAM Radio operators, who installed two poles within the setback area of their properties in Central. Mr. Bissell would also like to install a 14' - 45' free standing crank up tower, with a bolted steel base to a concrete slab. The adjacent neighbor, Evan and Bridget Jones, have written a letter indicating they have no problem with the pole erected near their property line. As reviewed previously, one of Mr. Jensen's poles may be installed on Forest Service property and they will be doing a survey to clarify if there is encroachment on their land. That particular pole meets the height requirement at 34 feet. As reported previously, the staff attorney has reviewed the Memorandum Opinion and Order before the Federal Communications Commission on Federal preemption of state and local regulations pertaining to Amateur radio facilities. This is being reviewed conditionally on exceptions to height limitations. The maximum height regulation is 35 feet without a conditional use permit. The commissioners requested a check list for reviewing these types of uses conditionally. Dean Cox was invited to provide the formula portion of the check list he created. The following check list was reviewed:

***FCC recognizes the national need for amateur radio in the event of an emergency allowing for reasonable and practicable regulations (accommodations). Ensure consideration is well documented and make Facts and Findings.***

**Safety:** Balance health, safety, and welfare of the citizens of the county.

- ☐ The fall zone may not encroach on neighbors without a waiver
- ☐ Building Permit required
- ☐ Engineering required for permitting process to ensure safe installation.
- ☐ Importance of having the poles maintained and removed if not in use. (*Wind Energy*

*Ordinance: Any system which is not used for one (1) year, excluding up to six months for repairs, shall be removed within the following six months. Failure to remove the system shall be deemed a violation.)*

**Technical Information:** Antenna height required to operate at licensed frequency being site specific.

- ☐ Retractable or solid antenna?
- ☐ Short wave frequency being operated on?
- ☐ Frequency licensed to operate on?
- ☐ Formula necessary for determining optimal height:
  - ☐ General Class
  - ☐ Extra Class
  - ☐ Other
- ☐ Reasonably accommodate the radio operator's interests with those of zoning.
- ☐ The zoning authority may attempt accommodation by requiring retractable antennas, limiting hours of operation, and restricting height to that shown to be technically necessary for the type of amateur radio station licensed by the FCC.

Bruce Bissell, applicant, informed the commission that his neighbor to the north is in opposition, but his pole can not fall across their property. The neighbor to the east is very supportive and wrote a letter to that effect.

Dean Cox, County Administrator and licensed radio operator, complemented the applicants on their astuteness for answering the commissions question on what frequency they would like to operate on. He included by choosing 160 meter band that would maximize the height that would increase the efficiency of their antennas. At 160 meters their quarter wave antennas would look like broadcast towers. Although it may be appropriate, he would question if the county would want a quarter wave antenna that high. If the applicant ran a dipole, they could get by with a lower antenna and still have it work very well at 160 meters because the antenna would take its length horizontally. Mr. Cox said assuming the applicant is using the 80 meter band and a shorter wave length typically the height for a dipole would be seventy (70) feet. Even at seventy (70) feet the board will still need to look at how such a structure would be safe and what they would need to do to ensure the safety of the neighbors. Even at forty (40) to forty five feet it would still work reasonably well; as the antenna gets lower the efficiency does start to come down. There is a wide variety of ways the applicant can accommodate their needs, while the county sets reasonable safety standards. Together they can forge a solution that would be palatable to the health, safety and welfare needs of the citizens of the county, as well as meeting the emergency communication needs of the amateur radio operator. Mr. Cox said finding that area of compromise is not only possible, but easy to accommodate. In response to the commission, he said what the applicant is proposing is reasonable in his opinion.

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David W. Jensen, applicant, said his parcel is large and his tower could not fall across the property line. He also requested the fees for the Conditional Use Permit be waived, explaining he has limited resources and all the materials thus far have been gratis. He gave several of examples of how his services were needed during the Iron Man competition, saying he was glad he could be of assistance.

Dean Cox added amateur radio is an integral part of the counties emergency communication plan. He included that the federal government generally waives fees for amateur radio installation because of the greater public good that is met by having those facilities present.

Mr. Jensen questioned additional uses for his pole and the commission clarified that the pole can not be used for anything other than the proposed use.

**Facts/Findings:**

- The following safety requirements have been met: the fall zone, the pole was engineered, the existing pole has been visited by the county inspector and meets the county requirements, the new tower is subject to the approval of the building inspector
- We do allow exceptions to the height requirements for a Conditional Use Permit (County Code 10-13-12)
- We have received waivers from the neighbors who are located within the fall zone
- The FCC recognizes the importance of amateur radio
- The use is an asset to Washington County's Emergency Preparedness Plan
- The height of the antenna is appropriate for the applicants' license
- Both applicants have a license

The use complies with the following from the County Code (10-18-6):

- The use complies with all applicable provisions of Washington County ordinances, state and federal law
- The use is not detrimental to the public health, safety and welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity
- The use is consistent with the characteristics and purposes stated in the general plan, as amended, as well as with the zone
- Requirements for the management and maintenance of facilities is adequate and it will be removed if it is not being used for its approved use

In reviewing the County Code (10-18-6) the following were found to be not applicable:

- All of section 10-18-6(A)(1)(e)
- 10-18-6(A)(1)(g)

The commission voted on the facts and findings, with all four (4) commissioners voting aye.

**Motion was made by Commissioner Balen to recommend approval of the Conditional Use Permit, for an exception to the height requirement for the poles to be erected in Dixie Deer Estates for applicants Mr. Bissell and Mr. Jensen, based on the facts and findings, for a period of one (1) year. Commissioner Balen also recommended the fees for this Conditional**

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**Use Permit be waived, as it is protocol for government agencies such as the Forest Service and the BLM to waive fees for amateur radio operators. Commissioner Christopher seconded the motion, with all four (4) commissioners voting aye.**

**Item #5. CONDITIONAL USE PERMIT** Request permission for 3 RV pads for a private recreational facility at the Peek-a-Boo Ranch, within the OST-20 zone on 57 acres generally located near Brookside. Monte Holm, applicant.

The Planner noted that a previous owner installed three (3) RV pedestals for private recreation use prior to selling his property, without approval of a Conditional Use Permit. Now it is under new ownership and Rocky Mountain Power is installing new distribution lines, the applicant has submitted a site plan that includes the location for RV pads. The septic system for the 2<sup>nd</sup> dwelling for hired hands (bunk house), which was approved by planning staff on July 27th and these additional temporary use facilities have been installed and approved by the Southwest Utah Public Health Department. With the previous review, it was documented that there was ample culinary water from a private well for these uses.

Patti Wynn, the applicant's assistance, said they are just trying to bring the property in to compliance. These were existing when Monte Holm purchased the property. She said he intends to use it as a ranch, where they will have family reunions a couple of times a year. Currently there are no pads for the RV's but the septic system is in.

The Planner noted that the applicant needs to make sure the site plan reflects their intentions. It is currently labeled concrete RV pads; if they applicant changes it to gravel, he will need to change the site plan.

The Commission and staff discussed the Northwest Special Service District's concerns and it was determined that the applicant will need to take care of those fees prior to receiving a building permit.

**Facts/Findings:**

- The use is consistent with the characteristics and purposes stated for the OST-20 zone
- The applicant has met the requirements for services including: water, sewer and power
- The proposed use is for non commercial purposes

The commission voted on the facts and findings, with all four (4) commissioners voting aye.

**Motion was made by Commissioner Everett to recommend approval for the Conditional Use Permit to establish a private recreational facility, based on the facts and findings, subject to meeting the requirements of the Utah Wildland-Urban Interface Code, for a period of one (1) year. Commissioner Jones seconded the motion, with all four (4) commissioners voting aye.**

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**Item #6. PROCEDURES & RULES OF ORDER** Annual review of Planning Commission Procedures and Rules of Order. County initiated

The Planner explained that the Planning Commission needs to review their procedures and rules of order as part of an ongoing education program, for insurance purposes, which will benefit the County. She said the Commission should have read both documents prior to the meeting and she asked if they had any questions or concerns.

The commission wanted to add the two minute time limit, for public comment, to the Rules of Order.

**Item #7. STAFF DECISIONS** Review of decisions from the Land Use Authority Staff Meeting held on July 20 and August 3, 2010. County initiated.

The staff meeting convened at 9:30 a.m. July 20, 2010. Staff Members Present: Deon Goheen, Planning & Zoning Administrator; Kurt Gardner, Building Official; Todd Edwards, County Engineer; Rachelle Ehlert, Deputy Civil Attorney; Darwin Hall, Ash Creek Special Service District Director; Tina Esplin, Washington County Water Conservancy District; Laurence Parker, Southwest Utah Public Health Department; and Paul Wright, Department of Environmental Quality.

Excused: Ron Whitehead, Public Works Director

**CONDITIONAL USE PERMIT EXTENSION:**

**A. Review extension to have an accessory dwelling within a garage, located at 395 East Pine Valley Road, Lot 3B, in Pine Valley. Mike Albright.**

This item was reviewed for the 3<sup>rd</sup> extension at the previous the previous staff meeting for an accessory dwelling. The permit file does not show that a permit was ever issued. As previously reviewed, the applicant submitted a site plan and floor plan for staff review. An additional septic permit was issued by the Southwest Utah Public Health Department. This meets the criteria set forth for accessory dwelling units and the accessory dwelling seems to be incidental to the main dwelling. The staff rescinded their previous motion of June 22, 2010, and tabled this item for two weeks to get further information from the applicant, whereas the chairman of the planning commission suggested that this item should have been denied. On July 15, 2010, Mr. Albright indicated that he would not be able to build for another year and then he would do an addition to the main dwelling, instead of a detached building. **Staff concurred that no action was needed and this request would lapse.**

**B. Request permission to build restrooms for a pavilion within the A-20 zone that was constructed in 1979 by Sterling Tullis (Pmt. #01096 6/14/79) in Pinto. Kirk Tullis, applicant.**

This is an automatic annual review, with the construction of the restrooms being completed and the building permit has not been issued as yet. The property is located across the street from their pavilion, and is used for the camp trailers when they have their reunions. Eventually they may build a cabin on this same parcel. Previously the applicant showed a plan of the facilities and a letter from the Southwest Utah Public Health Department explains that the existing septic appears to be adequate for the proposed construction of the two restrooms. Staff reviewed the possibility of future expansion and indicated a need for a zone change to FR-1 to accommodate the recreational facility. The setbacks for this zone are 25' on all side, rear and frontage. The staff tabled this item for two weeks to allow the building official time to obtain further information from the applicant on the construction of the restrooms and obtaining a building permit for the project in conjunction with an existing pavilion. Mr. Gardner noted that he was not able to contact the applicant with the numbers this office had available. Attorney Rachelle Ehlert advised that a letter should be written stating violation of building without a permit. Open item for discussion once the applicant was available. **No action taken, as this item will be held over to the next available meeting after contact has been made.**

#### **CONDITIONAL USE PERMITS.**

- A. Request permission for a 2<sup>nd</sup> dwelling for a family member, hired hand or seasonal laborer at the Peek-a-Boo Ranch, within the OST-20 zone on 57 acres generally located near Brookside. Monte Holm, applicant

The applicant submitted a site plan for review, showing water rights and a letter from the Southwest Utah Public Health Department indicating their intention of issuing a septic permit, with testing on water. This review will bring the applicant into compliance with item A (below), whereas planning staff approves the Conditional Use Permit. ***10-13-16 County Code: MOVING DWELLINGS: Any dwelling proposed to be moved onto any parcel of land in the county shall meet the following requirements:***

***A. All dwellings moved onto sites in the county shall first be granted a conditional use permit as required by chapter 18 of this title.***

***B. A dwelling proposed to be moved onto a site in the county shall be less than fifteen (15) years of age at the time of moving unless otherwise approved by the planning commission.***

***C. A manufactured home shall be identifiable by the manufacturer's data plat bearing the date the unit was manufactured and a HUD label attached to the exterior of the home certifying that the home was manufactured to HUD standards. (Ord. 2001-815-O, 12-17-2001, eff. 12-17-2001)*** Manufactured homes are normally reviewed by the Planning Commission for a moving permit, and whereas, this home is already in place and being remodeled, needing extensive work on flooring, sheet rock and roofing to meet the snow loads in this

area, staff would handle this particular item at this level. The three (3) RV pads requested would need to be reviewed by the Planning Commission conditionally as private recreation grounds. **Staff approved the Conditional Use Permit, subject to the septic and building permit being issued, for the period of one (1) year.**

**CONDITIONAL USE PERMIT EXTENSION:**

- A. Request permission to build restrooms for a pavilion within the A-20 zone that was constructed in 1979 by Sterling Tullis (Pmt. #01096 6/14/79) in Pinto. Kirk Tullis, applicant.**

This is an automatic annual review, with the construction of the restrooms being completed and the building permit has not been issued as yet. The property is located across the street from their pavilion, and is used for the camp trailers when they have their reunions. Eventually they may build a cabin on this same parcel. Previously the applicant showed a plan of the facilities and a letter from the Southwest Utah Public Health Department explains that the existing septic appears to be adequate for the proposed construction of the two restrooms. Staff reviewed the possibility of future expansion and indicated a need for a zone change to FR-1 to accommodate the recreational facility. The setbacks for this zone are 25' on all side, rear and frontage. The staff tabled this item for two weeks to allow the building official time to obtain further information from the applicant on the construction of the restrooms and obtaining a building permit for the project in conjunction with an existing pavilion. Mr. Gardner noted that he was not able to contact the applicant with the numbers this office had available. Attorney Rachelle Ehlert advised that a letter should be written stating violation of building without a permit. Open item for discussion once the applicant was available. **No action taken, as this item will be held over to the next available meeting after contact has been made.**

- B. Review extension on a single family dwelling within the OST-20 zone, Section 29, T38S, R14W, SLB&M, generally located northeast of Pine Valley. Ron Rencher, applicant.**

This is the 5th annual review, with the applicant actually living out of State eight (8) months out of the year; it has been difficult to get to the point of construction. Previously the applicant installed over 1,000 feet of water line, rebuilt the fence and keeps the pasture watered during the summer. The power, water tank, and septic were installed. This area is seasonal in nature, so there are probably 4 months out of the year that an individual could build. Records show that no permit has been issued as yet. Previously, Mr. Rencher indicated that most of the prep work is finished and he will obtain the building permit next season. **The staff granted approval of the Conditional Use Permit extension for an additional year, whereas this area is seasonal in nature and the initial work**



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**that went into applying for the conditional use should be enough to keep the use active.**

**C.** Review extension on a single family dwelling within the OST-20 zone, Section 29, T38S, R11W, SLB&M, generally located north of Smith's Mesa on Kanarra Mountain. Terry Wilson, agent and David W. Bauer, applicant.

This is the 4th annual review, with the requirements for the Conditional Use Permit having been met by submitting a site plan, septic permit and quantity and quality of the water from springs for culinary use. The property is accessed from Kanarra Mountain in Iron County, then entering the 600 acre parcel on the Washington County boarder. The site plan meets all setback requirements. This area is seasonal in nature, so there are probably 4 months out of the year that an individual could build. The Conservancy District and Dean Cox have reported that construction is taking place, with photographs of a cement slab. Records show that no permit has been issued as yet. If the septic has not been installed, the applicant will need to reapply and Robert Beers indicated he would check Southwest Utah Public Health Department records. **The staff granted approval of the extension for another year based on work completed for submission.**

**Item #8. MINUTES** Consider approval of the minutes of the regular planning commission meetings held on July 13, 2010.

**Commissioner Everett made a motion to approve the minutes from July 13, 2010. Commissioner Balen seconded the motion, with all four (4) commissioners voting aye.**

**Item #9. COUNTY COMMISSION ACTION REVIEW** Review of action taken by the County Commission on Planning Items. County initiated.

The Planner reviewed the action taken on Planning Items by the Washington County Commission on August 3, 2010, beginning at 4:00 p.m.: (a) Conditional use extensions on crushing operation: (1) near Veyo, Utah in Section 11, T40S, R17W, SLB&M; and (2) Frei Pit in Section 36, T41S R17W, SLB&M located south of Ivins... Progressive Contracting Inc., applicant.; (b) Conditional use extension to install a proposed 100' lattice tower within the RA-1 zone, on 1 acre of land owned by the Theresa Haury, in Veyo... Atlas Tower, LLC, Tower Owner and WiBlue, Inc./Nathan Foster, applicant; (c) Conditional use to install a proposed 100' lattice tower within the RA-1 zone, located near the water tank, on land owned by the Washington County Water Conservancy District, in the Cliff Dweller's subdivision... Atlas Tower, LLC, Tower Owner and WiBlue, Inc./Nathan Foster, applicant; (d) Conditional use extension on an Ultra-marathon event, Red Mountain 50K, which begins west of Central on dirt roads and runs south of Red Butte to Gunlock, then on to the Shivwits Reservation along Old Hwy. 91 to Ivins on April 23, 2011... Red Mountain Running LLC/Jeremy Frehner, applicant; (e) Conditional use for 50k, A Hurricane Jem one-half and full Marathon Trail on BLM Land east of Hurricane and south of the Virgin River... Jeremy Frehner, applicant and Phil Packard, agent; (f)

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Ordinance amendment of changes to Title10, Chapter 4-1: Definitions: Accessory Building and Accessory Dwelling Unit... County initiated: and (g) Ordinance amendment on changes to Title10, Chapter 10-2 & 4: Caretakers dwelling - permitted C-2; delete G; and re-lettering G thru I.

**The Planner said all of these items were approved based on the recommendations of the Planning Commission.**

**Item #10. COMMISSION & STAFF REPORTS:** General reporting on various topics. County initiated.

Commissioner Everett asked about the Frei Pit violation and the Planner explained once the county writes them a violation notice, they have thirty (30) days to come into compliance.

Commissioner Everett made a motion to adjourn the meeting. Commissioner Balen seconded the motion, with all four (4) commissioners voting aye. There being no further business at 3:35 p.m., Pro tem Chair Wilson adjourned the meeting.

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Darby Klungervik, Planning Secretary